UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,537	09/26/2003	Vijay G. Kasireddy	020431.1119	3740

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EXAMINER
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ART UNIT	PAPER NUMBER
3688	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/672,537	KASIREDDY, VIJAY G.
	Examiner	Art Unit
	KHANH H. LE	3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>*30 July 2009*</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-37* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-37* is/are rejected.
7)☒ Claim(s) *37* is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____ .

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 30, 2009 and the Amendment after Final, dated June 30, 2009 have been entered.

Claims 1-37 are pending, with claims 1 (system), 13 (method), 25 (CRM) and 37 (system) as independent claims.

Claim Objections

2.   The amendment filed on has overcome the previous objection of claims 1 and 37 in the last Office Action. Thus, the Examiner hereby withdraws such objections.

However, Claim 37 is objected to because of the following informalities:
Claim 37 lines 3-4: "and entity" in "… supply chain entity and entity" is not clear. It is assumed this is a typographical error and that "and entity" should be deleted. Appropriate correction or clarification is required.

(Interpretation of claim 37 (for prior art application): **Claim 37 is** interpreted as being directed to the quote system).

Claim Rejections - 35 USC § 112-2nd paragraph

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4.   Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
A single claim covering both an apparatus and a method of use of that apparatus is invalid because such a claim "is not sufficiently precise to provide competitors with an accurate determination of the 'metes and bounds' of protection involved" and is "ambiguous and properly rejected" under section 112, paragraph 2. See IPXL Holdings, L.L.C. v Amazon.Com, Inc. (CAFC, 05-1009, -1487, 11/21/2005) citing Ex parte Lyell, 17 USPQ2d 1548 (BPAI 1990):
Because claim 1 recites both a device (sensing device) composed of several components and the method for using that device, it does not apprise a person of ordinary skill in the art of

its scope, and it is invalid under section 112, paragraph 2. It is unclear whether infringement of claim 1 occurs when one creates the sensing device that allows the user to receive indicating data therewith, and perform the other claimed steps or whether infringement occurs when the user actually uses the sensing device to perform all the claimed steps. Thus, "such a claim "is not sufficiently precise to provide competitors with an accurate determination of the 'metes and bounds' of protection involved" and is "ambiguous and properly rejected" under section 112, paragraph 2. Id. at 1550-51. This rule is well recognized and has been incorporated into the PTO's Manual of Patent Examination Procedure. § 2173.05(p)(II) (1999) ("A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph."); see also Robert C. Faber, Landis on Mechanics of Patent Claim Drafting § 60A (2001) ("Never mix claim types to different classes of invention in a single claim."). IPXL Holdings, supra.

Here, for example, claim 1 recites: "A computer-implemented system… comprising: **"a user interface that <u>receives</u> …, <u>receives an incentive</u> from a quote system, and communicates the incentive to a consumer;…"** is mixing system and system elements with method steps. Thus is unclear. See IPXL Holdings, supra.

Dependent claims 2-12 are rejected based on their dependency to claim 1.
Appropriate correction is required.

Nomenclature and interpretation
5.   For brevity, the following nomenclature (matching the claims language) is used:

DE : "Downstream supply chain entity"
UE: "Upstream supply chain entity"
SCD = "a supply channel delay between the DE and an UE". Note: it is interpreted that by definition the SCD is a time that must elapse before a product in inventory of the UE can be made available to a consumer at the DE.

OLT: (customer) "order lead time". This is when a customer agrees to take delivery of a product at a later time than a current time at a DE. Thus is interpreted that by definition the OLT represents a time difference between a future date of delivery to customer and the current date. **Thus the OLT is by definition longer than SCD.**

For example if the regular supply channel supply lead time between a UE and a DE, i.e. the SCD is 10 days, then for the customer agreeing to take delivery 5 days from today at a retailer (a DE), then the OLT ((customer) "order lead time"), with respect to the time the product is still at the UE, is 15 days.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.   **Claims 1- 11, 13-23, 25-35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franco US 7257552.**

Claims 1, 13, 25, 37 and 2, 14, 26:

Franco discloses consumer products distribution system, customer interface to place orders, customer specifying delivery schedule for "predictive purchasing ", collaboration system along supply chain to reduce costs to all involved including consumers (e.g. abstract, Fig 1, 28A and associated text; excerpts below). Consumers are given incentive discounts to promote the use of Predictive Purchasing, which significantly improves supply chain productivity (e.g. abstract, Fig 28A and associated text; excerpts below; especially col. 52 lines 26-67).

Franco further discloses at least the following system and software:

Description Paragraph - DETX (119):
*   Each Inventory Provider 130 can communicate with the following: (1) The VIMS 200 to fill consumer orders from its Inventory Site 112 or to obtain consumption statistics and forecasts, Virtual Inventory status, and real-time data on consumer orders. (2) The OIMS 111 of a Retailer 110 to negotiate product supplies, optimize product distribution, minimize total inventory, and reduce distribution cost and time. (3) Each Inventory Site 112 to which it supplies products for the matters related to product deliveries. (4) The PTSS 300 for deliveries or pickups, and time updates for pending deliveries or pickups.*

Relevant excerpts follow:

Abstract :

   *A real-time transaction processing Consumer Products Distribution System
(PDMS) reduces distribution costs, facilitates the distribution of products to
consumers and makes online shopping practical. The PDMS integrates*
Collaborative Inventory Sharing, *Order Aggregation, Consumer <u>Predictive
Purchasing,</u> Product Transport Support Service, Display Shops, Uniform Consumer
Preference Codes, Integrated Virtual Technical Support Centers, and other
convenient features.* **Consumers purchase products through web sites of local
and remotely located retailers preferably using <u>Predictive Purchasing.</u>** *The
items purchased from multiple retailers are aggregated at a consumer selected
Order Aggregation Site (OAS) based upon a consumer specified schedule. The
consumer can pick up the aggregated orders at the selected OAS or have the
aggregated orders delivered to a residence. Commercial carriers process
consumer parcels at OASs where they are combined with Aggregated Orders for
pickup or delivery.* **<u>Consumers are given incentive discounts to promote the use
of Predictive Purchasing, which significantly improves supply chain
productivity.</u>**

  (col.1 lines 13-20) :
   *This invention relates generally to a method and system for improving the
efficiency and reducing the cost of distributing and selling products to
consumers.* **More particularly, the invention relates to Internet based methods
and systems for Just-In-Time product distribution, inventory sharing**, *order
aggregation,* **consumer <u>predictive purchasing,</u>** *and other conveniences and
benefits that provide incentives for consumers to shop online.*

  (col. 3 lines 6-24)
   *One aspect of the invention relates to Consumer Predictive Purchasing. In
the current product distribution space, vast amounts of extremely valuable
predictive consumption data stored in the minds of individual consumers are
lost every day to the detriment of the supply chain and the economy. This
aspect provides a system and method to collect and store, in real-time,
predictive consumer consumption data. The use of this data in supply chain
planning and forecasting can significantly contribute to major cost reductions
in product manufacturing and distribution. In one embodiment of this
invention,* **consumers are offered incentive <u>discounts</u> to use the infrastructure
provided by the PDMS for predicting their consumption needs at a future date
and placing Predictive Purchase orders scheduled for future delivery to fulfill
the predicted needs. The incentive <u>discounts</u> can be determined by appropriate
algorithms designed to ensure extensive consumer participation. This aspect is
discussed in Sections, II.A.7 and VIII of the Detailed Description of the
Invention.**

  (col.6 lines 1-10)
   One specific object of this invention is to provide a system and method for

coordinating the operation of the Collaborative Inventory Sharing aspect. This
system and method gives each participating merchant the opportunity **to minimize**
inventory and costs *while offering a broader selection of products and better*
service to consumers. This system and method also **offers retailers the**
opportunity *to broaden their customer base,* **negotiate better terms and prices**
for their product acquisitions, balance and reduce **inventories, and eliminate**
unnecessary product transportation costs.

(col. 6 lines 20-23)
   Another specific object of this invention is to provide a system and method
for coordinating Consumer Predictive Purchasing. This system relies upon
incentive **discounts** *to encourage consumers to use Predictive Purchase Orders.*

(col.7 lines 6-18)
   All participants in the distribution chain, such as manufacturers,
wholesalers, distributors, retailers, and consumers can derive benefits from
this invention. Manufacturers can obtain accurate real-time data upon which to
base production plans. Using a Just-In-Time business model, wholesalers,
distributors, and retailers can operate efficiently, with reduced **inventories,**
product costs, shipping costs, and shipping times. Retailers can ensure that
no sales are lost due to lack of inventory *and can better serve their customers*
with broader product selections. At the end of the distribution chain,
consumers can shop comfortably from home, buy products at more competitive
prices, receive their purchases more quickly, and have little or no need to
drive for shopping.

(col. 15 lines 32-51)
 Consumer Predictive Purchasing
   The VIMS 200 preferably manages and coordinates the operation of specialized
application programs that support Consumer Predictive Purchasing. One of these
programs helps consumers predict and plan their household consumption. Another
computes incentive price **discounts**. **Using the infrastructure provided by the**
PDMS 100, consumers can obtain significant price **discounts** **on Predictive**
Purchase orders scheduled for delivery at some future time determined by the
consumer's prediction. *The consumer ordering data can be collected and*
processed by the PDMS **100 in real-time to** *generate consumption reports that are*
available **to the affected participants in the product distribution path,** *from*
the manufacturers that produce the products to the retailers that receive the
purchase orders. **This information gives the manufacturers the opportunity to**
generate accurate production forecasts and manufacturing schedules and provides
the necessary infrastructure for the entire product distribution chain to

approach a Just-In-Time operating model.

Description Paragraph - DETX (92):
In a preferred embodiment of this invention, the architecture of the VIMS
200 is scalable through a component-based API which allows programmatic access
to low level data structures and functions. This feature allows flexible
customization of the VIMS 200 to meet specific business requirements through
the use of specialized application programs. Examples of such specialized
application programs are:
(1) A program that coordinates the use of an OAS 400
for shipping and receiving parcels as a convenience to consumers.
(2) A program that optimizes the use of the trucks associated with the PTSS 300 by
optimizing schedules and itineraries subject to system constraints.
*(3) **A program that computes minimum acceptable inventory levels for the most***
efficient operation of Inventory Sites.
*(4) **A program that helps consumers predict and plan household consumption to enable them***
to take advantage of the incentive <u>discounts</u> associated with Consumer Predictive
Purchasing. *(5) A program that manages and coordinates the operation of Integrated Virtual*
Technical Support Centers.
(col. 52 lines 12-25)
In one embodiment, the VIMS 200 provides web based programs that operate
with consumer specific historical consumption data stored in the Consumer DBM
239, to help consumers predict their future consumption needs. Using such
programs, the Consumer 120 can obtain reasonable estimates of future household
consumption and then use these estimates to place Predictive Purchase orders to
fulfill consumption needs at some future time. **To promote the use of**
Predictive Purchase orders, Retailers 110 can offer special incentive <u>discounts</u>
to consumers that place Predictive Purchase orders scheduled for delivery at
some future time to fulfill the predicted needs. These special incentive
<u>discounts</u> provide a powerful vehicle for collecting predictive consumption data
from consumers.

(col. 52 lines 26-39)
To support Predictive Purchasing, the VIMS can provide specialized
*application programs that **estimate supply chain cost savings resulting from***
Predictive Purchasing and correlate such savings with the Predictive Purchase
Delay (PPD). *As used herein,* ***Predictive Purchase Delay (PPD) is the time span***
between the time the consumer places a Predictive Purchase order and the time
the consumer agrees to take possession of the goods purchased. *The specialized*
*application programs also correlate the PPD to the incentive price **<u>discounts</u>***
*offered to consumers to **enable retailers to tailor incentive <u>discounts</u> to the***
markets they serve and the business models they use. In general, the longer
the PPD is, the larger the achievable supply chain cost savings and the
incentive price <u>discounts</u> are.

(col. 52 lines 40-67)

*The use of Predictive Purchasing can bring major economic benefits to the entire supply chain, some of which can be passed to consumers in terms of incentive price **discounts**. For purposes of illustration, assume that based upon historical consumption records maintained by the VIMS 200 on the behalf of a specific consumer, **Predictive Purchase orders for milk can be placed by that consumer with a PPD of 10 days. When the consumer places a Predictive Purchase order, preferably the ordering information becomes available in real-time to all the participants in the supply chain, from the dairy that processes the milk to the retailer that receives the order.** Once a significant percentage of consumers adopt Predictive Purchasing, the dairy can accurately plan and schedule production and significantly improve productivity. **Likewise, the distribution system can operate efficiently with Just-In-Time scheduling.** Milk containers can be shipped from the dairy to regional distribution centers and within a few hours be transported by the PTSS 300 to each designated OAS 400 Just-In-Time to meet Order Aggregation schedules. **Accordingly, the dairy-to-consumer distribution time and the total inventory of milk in the distribution pipeline can both be reduced to a minimum. In addition, the costs otherwise experienced by Retailers 110 for keeping milk in inventory in expensive shelf space, and other costs associated with handling, spoilage, and overhead can be eliminated.** In general, similar productivity improvements for both perishable and non-perishable products can be achieved at most stages of the supply chain.*

(col. 52 lines 26-39)

*To support Predictive Purchasing, the VIMS can provide specialized application programs that **estimate supply chain cost savings resulting from Predictive Purchasing and correlate such savings with the Predictive Purchase Delay (PPD).** As used herein, **Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased.** The specialized application programs also correlate the PPD to the incentive price **discounts** offered to consumers to **enable retailers to tailor incentive **discounts** to the markets they serve and the business models they use. In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price **discounts** are.***

(col. 53 lines 1-4)

*FIG. 28A illustrates a method 2800 by which specialized application programs can estimate supply chain cost savings, correlate them with the PPD, and **derive***

appropriate incentive price <u>discounts</u> for Predictive Purchases.

(col. 53 lines 16-26)
At step 2803, the correlation between PPD and incentive price <u>discounts</u> offered to consumers is identified. *This correlation can be established empirically by a set of statistical experiments using a range of PPD values and a range of incentive price <u>discounts</u>.* ***A separate experiment is conducted for each PPD value whereby each experiment involves offering various incentive price <u>discounts</u> and recording the number of Predictive Purchase Orders placed by consumers that take advantage of each price <u>discount.</u>*** *From this data the correlation between PPD and incentive price <u>discounts</u> can be statistically evaluated.*

(col. 53 lines 27-37)
At step 2804, the correlations identified in steps 2802 and 2803 are analyzed to establish the incentive price <u>discounts</u> that generate the desired cost reductions. Various types of criteria can be used to perform this analysis. For example, a criterion can be maximizing profitability after accounting for price <u>discounts</u>. ***At step 2805, the incentive price <u>discounts</u> associated with the respective PPDs are applied.*** *At step 2806, data representing online orders for the product is collected and stored over time.* ***This data extends to the full range of PPD values and their respective incentive price <u>discounts</u> and includes the case where the PPD is zero.***

(col. 53 lines 38-48)

At step 2807, the data collected over time is periodically analyzed to establish revised incentive price <u>discounts</u>. ***At step 2808, the revised incentive price <u>discounts</u> associated with the respective PPD values are applied to the product.*** *After step 2808, the process loops back to step 2807 and remains in an infinite loop, which over time periodically revises the incentive price <u>discounts</u> to obtain optimum performance in accordance to a specified criterion. For example, the long-term average price paid by consumers for the specific product is maintained at a minimum to control inflation.*

Thus Franco discloses, at the citations and excerpts above, all of claims 1, 13, 25, 37 and 2, 14, 26:

A computer-implemented system for distributing consumer demand upstream in a supply chain, comprising:
    one or more computer systems (see Fig 1, computer systems are e.g. item 111:"OIMS" or item 200:"VIMS") comprising:

a) a user interface (e.g. Fig 1 item 120: consumer shopping online; Fig 20 item 120, consumer browser) configured operable to:

a1) receive a consumer demand for a product to be received at a FUTURE DATE (see e.g. col. 52 lines 26-39 and excerpts above);

b) a quote system (e.g. Fig 1 item 113: storefront; or Fig 20 item 113: web storefront; e.g. Fig 28A, item 2803: "price offered" reads on quote and consumer acceptance or rejection) coupled configured to:

b1) receive, from the user interface, the consumer demand for the product;

b2) determine an incentive based on an OLT for the product, the OLT for the product representing a time difference between the FUTURE DATE and the current date, the OLT being longer than a supply channel delay between a DE and an UE, the incentive reflecting cost savings to the DE associated with the OLT (see e.g. col. 52 lines 26-39 and excerpts above; see FIG. 28A which illustrates a preferred method by the PDMS to correlate price discount to Predictive Purchase Delay (PDD); the PDD reads on the claimed OLT); and

b2) communicate the incentive (a price discount on the product) to the user interface (see e.g. col. 52 lines 12-25, and 26-39 and excerpts above),

wherein the user interface is further configured operable to:
a2) receive the incentive from the quote system (see above); and
a3) communicate the incentive to a consumer (see col. 52 lines 12-25 and excerpts above);

and

c) a consumer order management system (COMS) (e.g. Figure 1, item 111:"OIMS" or item 200:"VIMS" which includes "order generation module, order processing module, see col. 8 lines 5-9) configured to:

c1) communicate an order for the product to the UE (e.g. see Figs 6A-7B: order generation module) (to allow the consumer to receive the product at the FUTURE DATE from current inventory of the UE rather than from current inventory of the DE in exchange for the incentive) (see excerpts above: Just in time delivery model disclosed at excerpts above reads on receipt from current inventory of the UE since in Franco all lead delivery times as minimized).

(NOTE: though disclosed by Franco, the "to allow.." and "the cost savings…comprising…." limitations, (if any not deleted) are also interpreted as statements of purpose or effect (or natural consequence of the previous steps) only, thus do not need to be given patentable weight. This applies to all claims below having similar limitations).

Appellant argues (p. 22-23) that Franco at col. 52 lines 26-39 does not disclose determining an incentive based on an OLT wherein the OLT is longer than a supply channel delay between a DE and an UE.That is Franco's PPD is not an OLT that is longer than a supply channel delay between a DE and an UE.

However see explanation and definition in the nomenclature part above. The OLT is by definition longer than SCD which by definition is a supply channel delay between a DE and an UE.

Thus Franco's PPD is an OLT that is longer than a supply channel delay between a DE and an UE and an incentive is based thereon.

**Should an alternative interpretation be taken, Franco as discussed above teaches determining an incentive based on an OLT, thus whatever the value of the OLT is, the Franco's system would be capable of determining the incentive based thereon.

Franco, at (col. 52 lines 26-67) discloses:

 To support Predictive Purchasing, the VIMS can provide specialized
 application programs that estimate supply chain cost savings resulting from
 Predictive Purchasing and <u>correlate such savings with the Predictive Purchase</u>
 <u>Delay (PPD). As used herein, Predictive Purchase Delay (PPD) is the time span</u>
 <u>between the time the consumer places a Predictive Purchase order and the time</u>
 <u>the consumer agrees to take possession of the goods purchased</u>. The specialized
 application programs also correlate the PPD to the incentive price discounts
 offered to consumers **to enable retailers to tailor incentive discounts to the**
 markets they serve and the business models they use. <u>In general, the longer</u>
 <u>the PPD is, the larger the achievable supply chain cost savings and the</u>
 <u>incentive price discounts are.</u>

Thus if economic considerations make it desirable for merchants to promote discounts based on an OLT being longer than a supply channel delay between a certain DE and a certain UE, it would have been obvious to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") to do so, " to enable retailers to tailor incentive discounts to the markets they serve and the business models they use" as taught by Franco.

Claims 3, 15, 27:
FRANCO modified as above discussed discloses the system, method and software of claims 1, 13, 25 and further discloses wherein the quote system is a first quote system and operable to: collaborate with a second quote system associated with the UE to determine a cost at

the UE associated with the consumer receiving the product from the current inventory of the UE (e.g. at *col.6 lines 1-10: "each participating merchant the opportunity to minimize inventory and costs while offering a broader selection of products and better service to consumers. This system and method also offers retailers the opportunity to .. negotiate better terms and prices for their product acquisitions, balance and reduce inventories, and eliminate unnecessary product transportation costs."* suggests multi-parties quotes and negotiation systems to reduce costs for the benefit of customers.

Further Franco (at e.g. col. 52 lines 26-67) discloses savings are obtained at each step along the supply chain and are passed onto consumers as discounts thus reads on:
"determine a profit increase on the product at the DE based on:
the cost at the UE associated with supplying the product from the current inventory of the UE;
and the cost savings to the DE associated with the OLT ;
and determine the incentive based on the **profit increase"**.

Claims 4, 16, 28:

FRANCO modified as above discussed discloses the system, method and software of
claims 1, 13, 25 and further discloses
wherein the quote system is a first quote system and operable to collaborate with a second quote system associated with the UE to determine the incentive based on one or more business rules associated with one or more of the DE's and UE's (implied in citations or excerpts above).

Claims 5, 17, 29:

Claims 5 amounts to giving a larger incentive for a longer delivery delay time based on better achieved savings. Franco, reads on such at *(col. 52 lines 26-67)*.

> *To support Predictive Purchasing, the VIMS can provide specialized application programs that estimate supply chain cost savings resulting from Predictive Purchasing and <u>correlate such savings with the Predictive Purchase Delay (PPD). As used herein, Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased.</u> The specialized application programs also correlate the PPD to the incentive price discounts offered to consumers to enable retailers to tailor incentive discounts to the markets they serve and the business models they use.<u> In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are.</u>*

Thus FRANCO discloses the system, method and software of claims 1, 13, 25 and further discloses:
wherein: the FUTURE DATE is a first FUTURE DATE, the incentive is a first incentive, the UE is a first UE, and the OLT is a first OLT;

the quote system is further operable to:
determine a second incentive based on a second OLT for the product,
(the second OLT for the product representing a time difference between a second FUTURE
DATE and the current date, the second OLT being longer than a second supply channel delay
between the DE and a second UE),
(the second incentive reflecting collective cost savings to the DE and the first UE associated with
the second OLT);
and communicate the second incentive to the interface;
the interface is further operable to: receive the second PI from the quote system;
and convey the second PI to allow the consumer to choose whether to receive the product at the
second FUTURE DATE rather than the current date in exchange for the second PI;
and the COMS is further operable to,
if the consumer chooses to receive the product at the second FUTURE DATE rather than the
current date in exchange for the second PI,
communicate an order for the product to the second UE
(to allow the consumer to receive the product at the second FUTURE DATE from current
inventory of the second UE rather than from current inventory of the DE in exchange for the
second PI),
(the collective cost savings to the DE and the first UE associated with the second OLT and
reflected in the second PI comprising collective cost savings associated with the consumer
receiving the product at the second FUTURE DATE from current inventory of the second UE
rather than from current inventory of the DE or the first UE),
the second PI being larger than the first PI.

Claims 6, 18, 30:
FRANCO modified as above discussed discloses the system, method and software of
claims 5, 17, 28 and further implicitly discloses:
wherein the interface is operable to convey the first and second incentives to allow the consumer
to choose whether to receive the product at the first FUTURE DATE or the second FUTURE
DATE (rather than the current date) in exchange for the first incentive or the second incentive
(at e.g. col. 52 lines 26-67: " *the longer the PPD is, the larger the achievable supply chain cost
savings and the incentive price discounts are.* " *implies giving choices of a several* FUTURE
DATE 's for different incentives*).

Claims 7, 19, 31:
Claims 7, 19, 31 parallel claims 3, 15, 27 as to the second UE.
As discussed above, Franco at col. 52 lines 26-67: " the longer the PPD is, the larger the
achievable supply chain cost savings and the *incentive price discounts are and other citations
about sharing savings realized through the supply chain,* reads on claims 7, 19, 31:
Thus FRANCO modified as above discussed discloses the system, method and software
of claims 5, 17, 28 and further discloses:

wherein the quote system is a first quote system and operable to: collaborate with a second quote
system associated with the second UE to
determine a cost at the second UE associated with the consumer receiving the product from the
current inventory of the second UE;
determine a profit increase on the product at the DE based on:
the cost at the second UE associated with supplying the product from the current inventory of
the second UE ;
and the cost savings to the DE associated with the second OLT ;
and determine the second INCENTIVE based on the profit increase.

Claims 8, 20, 32:

Claims 8, 20, 32 parallels claims 4, 16, 28 as to the second UE.

As discussed above Franco at col. 52 lines 26-67: " the longer the PPD is, the larger the
achievable supply chain cost savings and the incentive price discounts are" and other citations
about sharing savings realized through the supply chain, reads on claims 8, 20, 32.

Thus FRANCO modified as above discussed discloses the system, method and software
of claims 5, 17, 28 and further discloses:
wherein the quote system is a first quote system and operable to collaborate with one or
both of a second quote system associated with the first UE and with a third quote system
associated with the second UE to determine the second INCENTIVE based on one or more
business rules associated with one or more of the downstream and first and second upstream
supply chain entities.

Claims 9, 21, 33:

As with claims 5, 17, 28 above, Franco, in the citations above, reads on repeating the
same method of claim 1 further up the chain supply chain, involving more UE's and
reflecting more savings with more UE's to be passed on to customers, which reads on
claims **9, 21, 33**.

Thus FRANCO discloses the system, method and software of claims 5, 17, 28 and further
discloses

wherein: the quote system is further operable to:

determine a third incentive based on a third OLT for the product,

(the third OLT for the product representing a time difference between a third FUTURE DATE
and the current date, the third OLT being longer than a third supply channel delay between the
DE and a third UE),

 the third incentive reflecting collective cost savings to the DE and the second UE associated
with the third OLT;

and communicate the third incentive to the interface; the interface is further operable to: receive
the third incentive from the quote system; and convey the third incentive to allow the consumer
to choose whether to receive the product at the third FUTURE DATE rather than the current
date in exchange for the third incentive ;
and the COMS is further operable to, if the consumer chooses to receive the product at the third
FUTURE DATE rather than the current date in exchange for the third incentive, communicate
an order for the product to the third UE
 (to allow the consumer to receive the product at the third FUTURE DATE from current
inventory of the third UE rather than from current inventory of the DE in exchange for the third
incentive) ,

the collective cost savings to the DE and the second UE associated with the third OLT and
reflected in the third incentive comprising collective cost savings associated with the consumer
receiving the product at the third FUTURE DATE from current inventory of the third UE rather
than from current inventory of the downstream supply chain entity, the first UE , or the second
UE ,

the third incentive being larger than the first incentive and the second incentive.

Claims 10, 22, 34:

        FRANCO modified as above discussed discloses the system, method and software of
claims 1, 13, 25 and further discloses wherein the consumer choosing to receive the product at
the future date rather than the current date in exchange for the incentive comprises one of: the
consumer purchasing the product at the current date; the consumer committing at the current date
to purchase the product at the FUTURE DATE ; and the consumer indicating an intention at the
current date to purchase the product at the FUTURE DATE (citations above).

Claims 11, 23, 35:
        FRANCO modified as above discussed discloses the system, method and software of
claims 1, 13, 25 and further discloses:
        wherein the consumer receiving the product at the FUTURE DATE comprises one of:
the consumer visiting the DE at the FUTURE DATE to pick up the product; the DE delivering

the product to the consumer at the FUTURE DATE and the UE delivering the product to the
consumer at the FUTURE DATE   (e.g. abstract).

> **7.   Claims 12, 24, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable
> over Franco as applied to claims 1, 13, 25 above, and further in view of Official Notice
> (with the definition of liquidated damages (clause) by *Investopedia.com*. Investopedia Inc.
> 07 Oct. 2008.<Dictionary.com, http://dictionary.reference.com/browse/liquidated damages
> or Walker US 5794207 A as support thereof).**

Claims 12, 24, 36:
FRANCO discloses the system, method and software of claims 1, 13, 25 and discloses
extensively about product returns and authorization of such but does not disclose explicitly

wherein, if the consumer chooses to receive the product at the FUTURE DATE rather than the
current date in exchange for the incentive , the consumer makes an initial payment to the retailer
at the current date based on one or more costs to the DE associated with cancellation of the
order.

However, Official Notice is taken that it is well known for vendors to charge fees or
penalties or liquidated damages for cancellation of order to protect vendors from breach of
contract by buyers. Usually a deposit or initial payment would be such liquidated damages. An
example is loss of deposit in cancellation of buying a house or cancellation of a custom product
e.g. a car. Thus it would have been obvious to a PHOSITA to add such customary practice to the
system of Franco to protect vendors.

**The references given earlier and below in support for the Official Notice, and the
responses to arguments below are hereby made an integral part of this rejection.**

Response to (Prior Art) Arguments

8.   Applicant's arguments filed July 30, 2009 have been fully considered but they are
not persuasive. To advance prosecution, the rejection under 35 USC § 102 is withdrawn and
replaced with a claim Rejection under 35 USC § 103(a) to allow for a possible alternative
interpretation of the claims an/or the prior art. See prior art discussion above.

Applicants at p. 22-23 contest some of structures in Franco as not being user interfaces or
quotes systems. Franco is clearly a computer network system thus the claimed structures read on
the earlier identified structures and their associated text.

Applicants also contest the Official Notice:
"Thus, if the Examiner continues to maintain the rejection of Claims 12, 24, and 36 based on the

Official Notice, Applicant respectfully requests that the Examiner provide documentary evidence
as necessitated by MPEP § 2144.03(C)." (Response,p. 27).

It is noted that documentary evidence had been provided (Final Office Action mailed 30
April 2009, pages 4, 21-22) which apparently have not been reviewed, since not discussed in
Applicant's Response.

The Examiner provided in the last Office Action, as support for the Official Notice, the
definition of liquidated damages (clause) by *Investopedia.com*. Investopedia Inc. 07 Oct.
2008.<Dictionary.com http://dictionary.reference.com/browse/liquidated damages>. i.e. a
provision present in certain legal contracts, that allows for the payment of a specified sum should
one of the parties be in breach of contract.

As to application of this clause in real estate or sales of goods or services, Walker US
5794207 A, is another support for the Official Notice: Walker relates to contracts for sale of
goods or services (including car sales and real estate, see col. 2 lines 34-38) in which liquidated
damages can be made part of the contracts (col. 30 lines 47-52).

As noted earlier the traversal of the Official Notice also is not adequate. To adequately
traverse an Official Notice finding, an applicant must specifically point out the supposed errors
in the examiner's action, which would include stating why the noticed fact is not considered to be
common knowledge or well-known in the art. See MPEP 2144.03(C). Here, the Official Notice
taken was that it is well known for vendors to charge fees or penalties or liquidated damages for
cancellation of order to protect vendors from breach of contract by buyers. Usually a deposit or
initial payment would be such liquidated damages. An example is loss of deposit in cancellation
of buying a house or cancellation of a custom product e.g. a car.
Applicants argue such Official Notice is not capable of instant and unquestionable
demonstration as being well-known. However, Applicants did not specifically point out the
supposed errors in the examiner's action, which would include stating why the noticed fact or
facts are not considered to be common knowledge or well-known in the art. That is Applicants
did not point out whether it is the legal concept of liquidated damages in contracts that
Applicants argue is not well-known, or the application to sales contracts involving vendors and
buyers, or the example given by the Examiner. As such the challenge to the Official Notice is
not adequate and the common knowledge or well-known in the art statement is taken to be
admitted prior art. See MPEP 2144.03 (C). Because the challenge is inadequate, the Examiner
also does not have to support the finding with adequate evidence.

Applicant further argues the prior Office Action fails to provide any articulation
(emphasis added) , let alone, clear articulation of the reasons why Applicant's claimed invention
would have been obvious.

The examiner notes that the evidence for a prima facie case is Franco as shown above,
and the Official Notice with support provided (Final Office Action mailed 30 April 2009, pages

4, 21-22) . The motivation to combine has been given. It is to protect vendors. Though succinct, the motivation is absolutely clear. Liquidated damages (with support provided) by definition, are provisions present in certain legal contracts, that allow for the payment of a specified sum should one of the parties be in breach of contract. Walker US 5794207 A, is another support for the Official Notice: Walker relates to contracts for sale of goods or services (including car sales and real estate, see col. 2 lines 34-38) in which liquidated damages can be made part of the contracts (col. 30 lines 47-52). To add such liquidated damages to the system of Franco only serves to protect the vendors in the Franco system, an unremarkable and thus obvious result. It is obvious vendors want protection from breach of contracts by buyers as asserted earlier. As noted in KSR, the PHOSITA is not an automaton, thus would have been capable of appreciating the benefit of using liquidated damages in Franco's system.

The Applicant did not show how that is not articulation or why this articulation is unclear. "

As noted earlier, as to the argued level of skill in the art, it can be found in the references, i.e. Franco and the Official Notice. The motivation statement can be seen as satisfying the teaching, suggestion, or motivation (TSM) test or rationale G in the KSR Guidelines cited by Applicants. Other rationales may apply however the Examiner asserts that the motivation as previously and currently stated is adequate for a prima facie case of obviousness.

Conclusion

9.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McMenimen US 20020077850 discloses Responsive manufacturing and inventory control, just-in-time production (abstract, claims).

10.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to KHANH H. LE whose telephone number is 571-27<u>2</u>-6721 and direct fax number is 571-27<u>3</u>-6721. The Examiner works a part-time schedule and can normally be reached on Monday-Wednesday 9:00-6:00.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Robert Weinhardt can be reached on 571-272-6633. The fax phone numbers for the organization where this application or proceeding is assigned are **571-273-8300** for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose

telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 27, 2009
/Khanh H. Le/
Examiner, Art Unit 3688